

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Requirements for Digital Television
Receiving Capability

ET Docket No. 05-24

COMMENTS OF MOTOROLA, INC.

Motorola, Inc. (“Motorola”) hereby submits these comments in response to the *Notice of Proposed Rulemaking* in the above caption proceeding.¹ In this proceeding, the FCC requests comment on a Petition for Rulemaking from the Consumer Electronics Association and the Consumer Electronic Retailers Coalition (“CEA-CERC”). Specifically, CEA-CERC’s petition proposes to eliminate the scheduled July 1, 2005 requirement that 50 percent of receivers with screen sizes 25 to 36 inches (hereinafter, “mid-tier receivers” or “mid-tier televisions”) sold in the U.S. include digital television (DTV) reception capability (“50 percent mid-tier benchmark”) and advance the date on which 100 percent of such receivers must include DTV capability (“100 percent mid-tier benchmark”) by four months, from July 1, 2006 to March 1, 2006.

Motorola opposes CEA-CERC’s proposal to effectively delay the deployment of mid-tier receivers with DTV capability by 8 months. Implementing this proposal will have a negative impact on the DTV transition and could delay the full availability of the 700 MHz spectrum for

¹ Requirements for Digital Television Receiving Capability, Notice of Proposed Rulemaking, ET Docket No. 05-24, FCC 05-17 (rel. Feb. 14, 2005) (“*DTV NPRM*”).

Public Safety and Commercial services.² The Commission must not allow further interruption in the digital television transition, a process that has already seen significant delays.³

If, however, the Commission determines that eliminating the 50 percent mid-tier benchmark is in the public interest, Motorola proposes that, instead of advancing the 100 percent mid-tier benchmark only four months, the Commission advance the benchmark eight months, to November 1, 2005. This would ensure that the penetration level of DTV tuner equipped televisions remains consistent with the Commission's original schedule and intentions.

Furthermore, regardless of the Commission's decision with respect to required date including DTV tuners in mid tier television, Motorola proposes that, in order to be more consistent with the statutory DTV transition requirement, the Commission move the date by which all televisions with screens 13 inches or larger must have DTV capability up 8 months from July 1, 2007 to November 1, 2006. Aligning the final DTV tuner requirements more closely with the legislatively anticipated DTV transition date of December 31, 2006, rather than allowing the sale of analog-only equipment for six months beyond this date, will provide consumers with greater clarity regarding the digital transition. It will also avoid the continued sale by manufacturers of analog-only televisions that will likely be incompatible with broadcast standards at the time of their sale. Moving the 100% dates to before the end of the year will also

² As the Commission is aware, the spectrum currently in use by broadcast analog television has been allocated for Public Safety and Commercial services, but will not be fully available until broadcast stations have fully transitioned to DTV. *See generally The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010*, 14 FCC Rcd 152 (1998).

³ *See Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Second Report and Order and Second Memorandum Opinion and Order, MM Docket No. 00-39, 17 FCC Rcd 15978, 15994, ¶ 33 ("Second Report and Order").

help drive down the cost of digital equipment more quickly by taking advantage of the large sales volumes that occur during holiday season.

I. THE COMMISSION SHOULD NOT ELIMINATE THE 50 PERCENT MID-TIER BENCHMARK

A. Eliminating the 50 Percent Mid-Tier Benchmark Will Significantly Delay Consumer Adoption of DTV Capable Televisions

Motorola recognizes that the 50 percent mid-tier benchmark is not the optimal mechanism for deployment of DTV tuners, especially given the complications involved in measuring whether this benchmark has been achieved. However, Motorola contends that it is more beneficial to continue the deployment of DTV tuners as scheduled than to delay deployment. The potential delay in deploying DTV enabled televisions in the mid-tier range disserves consumers who would have no option but to either spend considerably more for a high-tier television larger than 36 inches, or buy an analog television that will be incompatible with over-the-air broadcast signals within a few years. Further, the lack of DTV tuner-equipped sets would retard efforts to educate consumers regarding the benefits of buying a DTV tuner equipped television, including the ability to receive multicast programming and long term compatibility with the over-the-air broadcast standard.

CEA-CERC contends that “the 50 percent rule presents an economic imperative that is at odds with the Commission’s goals for completing the DTV transition.”⁴ According to CEA-CERC’s petition, because consumers will view two sets, one with a DTV tuner and one without a DTV tuner, as “identically satisfying their needs,” retailers are more likely to overorder non-DTV sets and under-order DTV sets because of the price differential. This contention, however, presumes that the customer has not been appropriately informed about the downside of

⁴ DTV NPRM ¶ 4.

purchasing a non-DTV receiver: namely, that such a receiver will be obsolete in a few years absent an analog converter. It further suggests that manufacturers have not effectively educated consumers about the benefits a DTV-equipped receiver provides, including immediate access to high definition channels, integrated tuner technology, and increased viewer choice through access to multicast programming. If this is the case, it is imperative upon manufacturers and retailers to inform customers of these considerations in order to increase DTV tuner sales and speed the deployment of DTV-capable receivers.

CEA-CERC's petition suggests offsetting the negative effects of eliminating the 50 percent mid-tier benchmark by moving the 100 percent mid-tier benchmark up 4 months to March 1, 2006. Though CEA-CERC's willingness to compromise is commendable, this proposal will not adequately offset the negative effects of this delay because the deadline falls after both the heightened holiday shopping season and the increased television sales immediately before the Super Bowl, scheduled for February 5, 2006.⁵ Based on average monthly sales information, it appears that CEA's proposal would result in 19.9 percent less DTV tuner equipped mid-tier televisions being sold by July 1, 2006, the current date by which 100% of mid-tier sets are DTV tuner equipped.⁶ This amounts to millions of televisions that would be sold with analog tuners that will be obsolete in a relatively short time.

⁵ See "Big Screens for the Big Game: TV Sales Pick Up Before Super Bowl Sunday," Mike Musgrove, Washington Post, February 5, 200, E01, *available at* <http://www.washingtonpost.com/wp-dyn/articles/A64753-2005Feb4.html> (noting that "dealer shipments of digital televisions were up 10 percent in December over November" and that the two busiest weekends for TV sales are the weekend before Christmas and Super Bowl weekend).

⁶ The 19.9% decrease in DTV sales is estimated from analyzing monthly unit sales to dealers of direct-view color TVs during the years 1992-1998; see http://ebrain.org/mara/mara_free.asp (visited March 30, 2005). Relative to the current tuner deadlines in the FCC rules the CEA proposal would lose 50% of the monthly sales from July 1, 2005 through March 1, 2006 and gain 50% of sales during March 1, 2006 through July 1, 2006. Over the 1992-1998 period the

Thus, eliminating the 50 percent mid-tier benchmark will have a significant impact on the number of mid-tier DTV receivers sold in the period between July 1, 2005 and March 1, 2006; an impact that will not be fully negated by moving the 100 percent mid-tier benchmark up four months. The Commission should avoid this negative result by maintaining the current DTV deployment schedule.

B. Eliminating the 50 Percent Mid-Tier Benchmark Could Delay the Full Availability of the 700 MHz Spectrum for Public Safety and Commercial Services

When the Commission adopted the DTV tuner requirement in 2002, it did so largely because of the concerns of broadcasting interests that a quick transition to digital broadcast television was impossible without widespread consumer adoption of DTV receivers.⁷ Without a guarantee that consumers would be able to receive digital signals over the air, broadcasters were loath to spend the time and resources necessary to complete the digital switch. The resulting delays have hindered the full availability of the 700 MHz spectrum for public safety and commercial services.

CEA-CERC's petition, by altering the schedule for the transition to DTV-tuner equipped televisions, threatens to further delay the availability of the 700 MHz spectrum.⁸ The importance of freeing this spectrum for the use of first responders and other users has been noted by

average percentage of TV sales from July 1, 2005 through March 1, 2006 is 69.9% of total yearly sales. Over the same period the average percentage of TV sales from March 1, 2006 through July 1, 2006 is 30.1%. The total percentage of fewer TV sales with DTV turners is estimated to be $69.9/2 - 30.1/2 = 19.9\%$.

⁷ Second Report and Order, ¶ 27 (noting the "reluctance of the public to buy DTV receivers until there are DTV stations offering attractive DTV programs, and the lack of incentive of [sic] for broadcasters to provide good attractive programming in the absence of an audience which will attract advertisers").

⁸ In the *Second Report and Order*, the Commission noted that "continued marketing of analog-only sets can only serve to delay the transition further." ¶ 35.

Congress, which recently passed legislation stating that “[t]he Federal Communications Commission should consider all regulatory means available to expedite the return of the analog spectrum.”⁹ Thus, the Commission should not take any action, such as eliminating the 50 percent mid-tier benchmark, which might indicate either to manufacturers or broadcasters that the FCC is not fully committed to a smooth and expeditious transition to over-the-air digital television.

II. IF THE COMMISSION REMOVES THE 50 PERCENT MID-TIER BENCHMARK, IT SHOULD ADOPT MOTOROLA’S ALTERNATIVE PROPOSAL TO SPEED THE SALES OF DTV-EQUIPPED TELEVISIONS

Should the Commission determine that the 50 percent mid-tier benchmark is not a reasonable measure to apply to television manufacturers, Motorola supports the decision to advance the 100 percent mid-tier benchmark. However, Motorola proposes what it believes to be a better alternative. Instead of advancing the date only 4 months to March 1, 2006, the Commission should advance the date 8 months to November 1, 2005.

A. Advancing the 100 Percent Mid-Tier Benchmark Eight Months Furthers the Commission’s DTV Tuner Penetration Goal

By moving the 100-percent benchmark to November 1, 2005, the Commission will be ensuring that the vast majority of mid-tier televisions sold over the holiday season will be capable of receiving DTV transmissions. As noted above, because holiday sales are responsible for a large portion of yearly television sales, this will mean a far greater number of DTV ready television sets will be purchased by consumers in the near future than if the Commission adopted CEA-CERC’s proposal to move the date to March 1, 2006. Based on information from CEA, it appears that CEA-CERC’s plan would mean approximately 19.9 percent fewer mid-tier receivers

⁹ Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108-458, § 7501.

sold through July 1, 2006, while Motorola's proposal would increase the Commission's previously anticipated penetration rate by 12.6 percent. Moreover, Motorola contends that an increase in consumer adoption will lead to increased incentives for retailers to educate customers as well as "word-of-mouth" education and marketing about the benefits of owning a DTV-ready receiver, leading to even faster adoption. Likewise, increased dispersion of DTV-ready receivers will encourage broadcasters to move swiftly to finish the digital transition.

B. Advancing the 100 Percent Mid-Tier Benchmark to November 1, 2005 Should Be Achievable by Manufacturers

The CEA-CERC petition claims that March 1, 2006 is the absolute earliest that manufacturers could meet the 100 percent mid-tier benchmark. As a manufacturer, Motorola understands the need for sufficient lead-time in introducing new products and adding new features in products. However, Motorola believes that moving the date to November 1, 2005 will be attainable by television manufacturers.

Manufacturers have been including DTV tuners in televisions since at least July 1, 2004 in response to the requirement that 50 percent of television 36 inches or larger include DTV tuners and at least some manufacturers have announced plans to include DTV tuners in mid-tier televisions.¹⁰ CEA and CERC have not maintained that there is a technical or manufacturing barrier to meeting the 50% mandate. Rather, they merely contend that retailers will frustrate

¹⁰ See, *RCA TARGETS BROADER CONSUMER BASE FOR DIGITAL TV WITH 35 NEW MODELS AT AFFORDABLE PRICES FOR 2005*, January 5, 2005, <http://tv.rca.com/en-US/01052005.html>. However, some manufacturers, while introducing new mid-tier television purportedly targeted at making HD content more widely available, are including only NTSC tuners. See *PANASONIC INTRODUCES NEW SCREEN SIZES IN EXPANDED DIGITAL LCD TELEVISION LINE*, January 5, 2005, <http://www2.panasonic.com/webapp/wcs/stores/servlet/prModelDetail?storeId=11301&catalogId=13251&itemId=87432&modelNo=Content12302004120151419&surfModel=Content12302004120151419>

efforts to meet the 50% objective and that consumers are not sufficiently educated to understand the advantage of buying a DTV-equipped television versus an analog-only television.

Accordingly, manufacturers' plans to include DTV tuners in mid-size sets should be well along the transition process for the majority of their sets, and they should be capable of equipping 100 percent of such sets within a relatively short period of time.¹¹ Moving the 100 percent mid-tier benchmark to November 1, 2005, while removing the 50 percent benchmark, will allow manufacturers four additional months to equip their remaining mid-tier models with DTV tuners.¹²

III. THE COMMISSION SHOULD MOVE THE 100 PERCENT BENCHMARK FOR ALL SETS TO NOVEMBER 1, 2006

Regardless of the Commission's decision on CEA-CERC's current petition, the Commission should move the deadline for all sets 13 inches or larger to be equipped with DTV tuners to November 1, 2006, two months prior to the date of the analog spectrum handover deadline.

In the *DTV-NPRM*, the Commission notes that it will not relax the July 1, 2007 as the deadline for all sets 13 inches or larger to be equipped with DTV tuners.¹³ In the *Second Report and Order* adopting this requirement, the Commission states that this date was chosen to be

¹¹ In fact, in 2002 the Commission noted that [m]anufacturers have...had sufficient time to develop the necessary components to provide for DTV tuning and indeed such components are now available from multiple services." *Second Report and Order* ¶ 33. In the intervening years, this availability has only increased.

¹² As a manufacturer Motorola recognizes that, while this goal should be attainable, it is ambitious. Accordingly, the Commission should consider waivers of the 100 percent benchmark for those manufacturers who, despite making a good faith effort, are not able to reach the 100 percent benchmark by November 1, 2005.

¹³ DTV NPRM ¶ 7.

“slightly beyond the target date for the end of the transition.”¹⁴ Motorola notes that July 1, 2007 is a full 6 months after the December 31, 2006 statutory requirement for the anticipated return of analog spectrum.¹⁵ By allowing manufacturers to continue to sell non-DTV equipped sets of any size after the analog handover is unconscionable, especially if consumers are as uninformed about the DTV transition as CEA-CERC contend. Moreover, even if no analog sets are sold after the handover, maintaining the July 1, 2007, deadline would allow manufacturers to sell non-DTV equipped tuners within days of when those sets would be obsolete.

Moving the final benchmark date to November 1, 2006 will have a similar effect as moving the 100 percent mid-tier benchmark to November 1, 2005. Moving the deadline to this date will promote the transition to DTV by taking advantage of increased sales during the holiday shopping season, increasing the number of DTV-capable sets that are in the homes of consumers, and reducing the need for extra conversion equipment and reducing the overall cost to consumers.

IV. CONCLUSION

Motorola does not support removing the 50 percent mid-tier benchmark on July 1, 2005 because it will have a delaying effect on the digital transition and the availability of the 700 MHz spectrum. However, should the Commission determine that the 50 percent requirement should be removed, it should advance the 100 percent mid-tier benchmark to November 1, 2005 to ensure that the original DTV-tuner penetration levels are maintained. Furthermore, in any case, the Commission should move the 100 percent benchmark for all 13 inch or larger television to November 1, 2006 to more closely coincide with the statutory end of the transition period.

¹⁴ Second Report and Order, ¶ 41.

¹⁵ 47 U.S.C. § 309(j)(14) (2005).

Respectfully submitted,

MOTOROLA, INC.

By: /S/ Steve B. Sharkey
Steve B. Sharkey
Director, Spectrum and Standards Strategy
1350 I Street, NW, Suite 400
Washington, DC 20005-3305
202 371-6953

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